

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-201447

DATE: June 15, 1981

MATTER OF: Multinational Agribusiness Systems
Incorporated

DIGEST:

1. RFP evaluation criteria involved only offeror knowledge and ability to perform required work and made no mention of cost. Technical proposal (submitted by prior contractor) consisting only of resume and statement that all work would be completed in timely fashion could properly be evaluated by agency. Consideration of cost to Government was appropriate, especially since cost proposals were required under RFP. Since protester admits it could not be price competitive, there was no prejudice because of RFP failure to state cost as evaluation factor.
2. Protest concerning whether contracting agency entered into unauthorized personal services contract to circumvent Government freeze on hiring is denied where contracting agency has specific statutory authority to employ persons or organizations on a temporary basis by contract or otherwise and funds have been appropriated for such purpose.

Multinational Agribusiness Systems Incorporated (MASI) protests the award of a contract to study the cost of sugar production in the United States, to Hosein Shapouri, Ph.D., by the Economics and Statistics Service, United States Department of Agriculture, pursuant to request for proposals (RFP) No. USDA/ESS-4-81. MASI alleges that contracting activity officials were prejudiced in favor of Dr. Shapouri because he had worked

[Protest of Department of Agriculture Contract Award]

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for the Department of Agriculture on a project which was the forerunner to the present study. MASI contends that the evaluation of technical proposals was biased in favor of Dr. Shapouri because Dr. Shapouri submitted only his resume as a technical proposal and yet received a higher technical rating than did MASI. MASI also contends that this contract was awarded to circumvent a Government freeze on hiring.

The protest is denied.

The RFP was issued on October 17, 1980, and called for submission of proposals by October 31, 1980. The statement of work comprised seven tasks, the first five encompassing the gathering and tabulating of data and the last two analyzing and reporting the results. All required work is to be completed by September 30, 1981.

The RFP evaluation criteria were as follows:

"Selection Criteria: Sugar
Cost Study

"Timing (40 percent). It is crucial that the study start immediately and that tasks 1-5 of the statement of work be completed by April 15, 1981.

"Technical Skills (40 percent). Knowledge must be sufficient for the contractor to design questionnaires and evaluate validity of the survey data collected. Knowledge of economic theory and quantitative methods of economic analysis and a thorough understanding of cost of production concepts and procedures are required for analyzing the data, interpreting findings and developing a forecasting model.

"Industry Knowledge (20 percent).

Responsibilities require that the contractor have an indepth working knowledge of the sugar industry with

respect to location of sugar production, processing and milling, technology employed, inputs used, input-output relationships, and prices of production goods and services."

Other than requesting a contract pricing proposal, the RFP was silent with regard to price and whether it would be a factor in determining which offeror would be awarded the contract.

Three proposals were received in response to the RFP. The technical evaluation panel rated Dr. Shapouri's proposal at 93 percent, MASI's proposal at 79 percent, and Engineering Consortium's proposal at 65 percent. In the timing category, Dr. Shapouri received a rating of 39 percent as compared to MASI's rating of 27 percent and Engineering Consortium's rating of 30 percent. Excluding the timing category, the technical proposals of MASI and Dr. Shapouri were rated virtually equal. The technical evaluation panel reported that Dr. Shapouri had indicated that he was immediately available and would have tasks 1 to 5 completed by April 15, 1981; MASI was given only a 27-percent rating for timing because of doubts that MASI would be able to meet the April 15, 1981, deadline, even though MASI proposed to begin work in early December 1980 and stated that it would complete the tasks by April 15. MASI's proposal was downgraded because the key economist proposed would only be available for 4 months prior to the deadline.

The contract was awarded to Dr. Shapouri, on November 12, 1980, at a price of \$28,000. At a debriefing held on November 17, 1980, Department of Agriculture officials told MASI's representative that, except for timing, the MASI technical proposal was comparable to Dr. Shapouri's, and that "MASI's cost proposal in the amount of \$142,927 was the major factor in not selecting them for the contract." On December 1, 1980, MASI received a copy of Dr. Shapouri's technical proposal, which consisted of his resume and a statement that he understood what was required and would accomplish all study objectives within the time constraints imposed by the RFP. On December 8, 1980, MASI filed its protest with our Office.

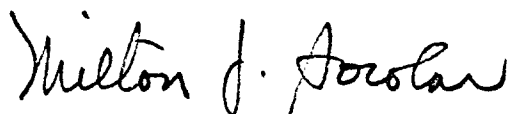
The central issue in this protest is whether proposals were evaluated in accord with the RFP's stated evaluation scheme and whether price could properly be the determinative factor in spite of the RFP's failure to list it as an evaluation factor. For the reasons that follow, we conclude that proposals were properly evaluated.

The selection criteria stated in the RFP involve an offeror's knowledge, skills, experience, and ability to perform the required work on time. Offerors were not required to submit models or designs or to show how they would accomplish the seven required tasks. Accordingly, Dr. Shapouri's proposal, although consisting only of his resume and statement that he would complete all required tasks within the desired timeframe, was sufficient for evaluation purposes in view of the fact that Dr. Shapouri had done work for the Department of Agriculture on the predecessor project. In the circumstances, we cannot find the evaluation of his proposal to have been unreasonable.

Even though price was not listed as an evaluation factor, we think it should have been obvious to all offerors that, if proposals were otherwise equal, the overall cost to the Government to procure would be an important factor. MASI should have known from the fact that a cost proposal was required that cost would have some impact on the award decision and that cost would become more important the closer the technical ratings of proposals. We do not believe that the absence of a statement in the RFP to the effect that cost would be an award factor compels the conclusion that cost could not be considered and MASI does not so argue. Rather, cost must be considered in every competitive procurement. See, for example, Grey Advertising, Inc., 55 Comp. Gen. 1111, 1123 (1976), 76-1 CPD 325. Moreover, since MASI admits that it could not have lowered its price sufficiently to have displaced Dr. Shapouri as lowest offeror, we cannot find that MASI was competitively prejudiced by this deficiency in the RFP. See Umpqua Research Company, B-199014, April 3, 1981, 81-1 CPD 254.

Accordingly, this portion of the protest is denied. However, because the RFP should have stated that cost would be a factor under the "selection criteria" section of the RFP, we are notifying the Secretary of Agriculture of this deficiency by separate letter.

MASI's charge that this award was made to Dr. Shapouri in order to avoid a Government freeze on hiring raises the issue of whether the contract is an unauthorized personal services type contract. In this regard, we note that under section 706(a) of the Organic Act of 1944 (7 U.S.C. § 2225 (1976)) the Department of Agriculture has authority to employ persons or organizations on a temporary basis by contract or otherwise so long as provision is made therefor in the applicable appropriation and the cost does not exceed the limitations prescribed in such appropriation. Moreover, funds have been appropriated for the Economics and Statistics Service, Department of Agriculture, specifically for employment pursuant to section 706(a) of the Organic Act of 1944. Act of December 15, 1980, Pub. L. No. 96-528, 94 Stat. 3100, 3101. Accordingly, since the contract is authorized by law, this portion of the protest is denied.



Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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June 15, 1981

The Honorable John R. Block
The Secretary of Agriculture

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in the protest of Multinational Agribusiness Systems Incorporated, against award of a contract to Hosein Shapouri, Ph.D., by the Economics and Statistics Service.

Although we are denying the protest, we wish to point out that portion of the decision which concludes that price should have been included as an evaluation factor. We suggest that this deficiency be brought to the attention of the procurement personnel involved with a view towards attempting to preclude a repetition of similar difficulties in future procurements.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Aroslan".

Acting Comptroller General
of the United States

Enclosure